(b) The ambiguity expressed by the Federal Court, arose with regard to the cooperation sought by the plaintiff of the respondent. The plaintiff's letter ended "we look forward to your kind co-operation in the matter." In my view, this polite gesture by the plaintiff does not affect his intention and make the notice insufficient. In *Ahearn* v. *Bellman*[3] (*Woodfall* Landlord and Tenant 27th Ed. Vol. 1 at 944) Cotton L.J. observed:

"It has been said and truly said, that a notice to determine the tenancy must be clear and unambiguous; but that does not at all mean that a notice otherwise sufficient is made insufficient by its being accompanied by something else."

This something else in the plaintiff's letter of June 22, 1971 is merely a polite gesture which seemed to be his habit in ending his letters. This is also shown in his subsequent letter dated January 6, 1971 at Exhibit P1 addressed to the respondent.

This does not in my view, discolour the intention of the writer.

(c) In *Jones* v. *Phipps*[4] it was held that a notice to quit must be such as that which the tenant may act upon with safety.

From subsequent correspondence between the parties dated January 6, 1972 and February 23, 1972, it would seem that the respondent had gathered the intention of the plaintiff and that he could safely act on the notice to quit but he had elected not to comply with it and instead insisted to put certain facts on record. These letters not produced at the hearing of the appeal at the Federal Court, are now reproduced:

"Tan Teck Chiang,
Chop Soon Heng,
43, Gambier Road,
Kuching.

6th January, 1972.

Messrs. Yong Joo Chuan & Yong Joo Kok,
No. 43, Gambier Road,
KUCHING.

Dear Sirs,

Re: *Memorandum of Sublease No. L.1740/1957*
No. 43, Gambier Road, Kuching

Further to my letter dated the 22nd June, 1971, please take all necessary steps to look for alternative accommodation before the expiry of the said Memorandum of Sublease on the 2nd September, 1972. I understand that you are owning a vacant shophouse at Ban Hock Road, Kuching, and I shall be grateful if you can make arrangements to move into the said shophouse before the 2nd September, 1972. I look forward to your kind co-operation in the matter.

Yours faithfully,
Sgd.
(TAN TECK CHIANG)
Yong Joo Chuan &
Yong Joo Kok,
43, Gambier Road,
Kuching.

23rd February, 1972.

Mr. Tan Teck Chiang (and others),
Chop Soon Heng (1st Floor),
43, Gambier Road,
Kuching.

Dear Sirs,

Re: *Memorandum of Sublease No. L.1740/1957*
No. 43, Gambier Road, Kuching

We thank you for your letters dated 22nd June, 1971 and 6th January, 1972, the contents of which are noted.

We wish to place on record that we do not own any shophouse at Ban Hock Road as alleged by you.

Yours faithfully,
Sgd.
(YONG JOO CHUAN)
Sgd.
(YONG JOO KOK)"

(d) Lastly whether it was competent to determine the tenancy during the currency of a term.

The tenancy was created in 1957. The Rent Control Ordinance has been in force in Kuching Municipal area on January 1, 1949. The memorandum of the lease in respect of the premises does not stipulate the determination of tenancy. But the premises being rent controlled, the Rent Control Ordinance would apply. In my opinion, the premises became controlled premises from the inception of the tenancy and any notice determining the tenancy has to comply with the Ordinance. This event may take place even during the currency of the contractual term.

For these reasons it is my ruling that the notice dated June 22, 1971 was a valid and proper notice.

Claim allowed.

Solicitors: *Chan, Jugah, Wan Ullok & Co.; Yong & Co.*

TOH YEW SING & ORS. v. PUBLIC PROSECUTOR

[A.Cr.J. (Tan Chiaw Thong J.) May 14, 1980]
[Sibu — Criminal Appeal No. 5 of 1980]

Criminal Law and Procedure — Appeal against order of forfeiture by lower court under section 17(2) of Gambling Ordinance — Notice of appeal and petition of appeal signed by counsel for appellants — Whether compliance with provisions of Criminal Procedure Code — Gambling Ordinance (Cap. 138), ss. 6(1) & 17(2) — Criminal Procedure Code, s. 307(i) to (iv).

The appellants in this case sought to appeal against the order of forfeiture made against them by the lower court under section 17(2) of the Gambling Ordinance, forfeiting certain sums of money found on their persons when the police raided a room in a local hotel. The appellants had pleaded guilty to and had been convicted in the lower court of an offence of playing a prohibited game under the First Schedule to, and contrary to, section 6(1) of the said Ordinance. The notice of appeal and the petition of appeal were signed by counsel for the appellants.

Held, rejecting the appeal: the notice of appeal and the petition of appeal must be made by and therefore must bear the signature, thumbprint or mark of the appellant, whichever is applicable. A petition signed by anyone else including an advocate on behalf of the appellant is not a compliance with the requirements of subsections (i) and (iv) of section 307 of the Criminal Procedure Code.

Cases referred to:-

(1) *Basri bin Ismail @ Perdansah Melanos* v. *Public Prosecutor* Criminal Appeal No. K. 24 of 1979 (unreported).

(2) *Pitting bin Haji Mohamed Ali* v. *Public Prosecutor* [1979] 2 M.L.J. 136.

(3) *Municipal Commissioner, Malacca* v. *Teh Chwee Swi* [1971] 2 M.L.J. 274.

(4) *R.* v. *McCready* [1978] 3 All E.R. 967; *The London Times* dated March 10, 1978.

CRIMINAL APPEAL.

Abdul Khalid bin Abdul Manaff (Deputy Public Prosecutor) for the appellant.

Robin Hii for the respondent.

Cur. Adv. Vult.

Tan Chiaw Thong J.: The appellants seek to appeal against the order of forfeiture made against them by the lower court under section 17(2) of the Gambling Ordinance, forfeiting certain sums of money found on their persons when the police raided a room in a local hotel, after they had pleaded guilty to and been convicted in the lower court of an offence of playing a prohibited game under the First Schedule to, and contrary to, section 6(1) of the said Ordinance.

Having regard to the fact that the notice of appeal and the petition of appeal were signed not by the appellants, but by their advocates, and in view of the fact that I have given a recent ruling on the matter, the court raised the question as to whether the appeal in these circumstances has been properly brought before it. This entails the consideration as to whether it can be regarded that the notice of appeal and the petition of appeal, signed by the advocates for the appellants, are a sufficient compliance with the relevant provisions of the Criminal Procedure Code setting out how an appeal should be brought before this court. Mr. Abdul Khalid has raised the same point in an earlier case in relation to which I have given a ruling. Learned counsel for the appellants has made no submission on the point. In this connection, since I have given a ruling on the point in the case of *Basri bin Ismail @ Perdansah Melanos* v. *Public Prosecutor,*[1] I would quote and adopt the relevant portions of the ruling which I gave in that appeal relating to the matter in question. I stated at page 3 of the judgment in that appeal:

"... it seems to me that this is a matter which essentially relates to the construction of the provisions of section 307 of the Criminal Procedure Code, particularly subsections (i), (ii), (iii) and (iv) thereof. Subsection (i) requires that a dissatisfied party in a criminal case or matter in the lower court who wishes to appeal to this court must lodge within the specified time a notice of appeal."

This was not done in the instant appeal because the notice of appeal was signed not by the appellants, but by their advocates. "Subsection (ii) stipulates *inter alia* that any notices or documents connected with the appeal may be served upon the appellant or *upon his advocate.* Subsection (iii) provides *inter alia* that a signed copy of the grounds of decision in the case appealed against may be served upon the appellant *or his advocate* by leaving the said copy at the address mentioned in the notice of appeal or by posting it by registered post addressed to the appellant at the said address. Subsection (iv) requires the appellant within the specified time to lodge a petition of appeal with the clerk of the lower court. It is apparent that whereas the provisions referred to above relating to the service of notices or documents connected with an appeal or signed copy of the grounds of decision in the case appealed against may be served upon the appellant or upon his advocate, the words "his advocate" are omitted respectively in subsections (i) and (iv). What is the significance of this? To my mind this means that the notice of appeal and the petition of appeal must be made by and therefore must bear the signature, thumbprint or mark of the appellant, whichever is applicable, and that a petition signed by anyone else including an advocate on behalf of the appellant is not a compliance with the requirements of subsections (i) and (iv)." Hence, non-compliance of such requirements would render the appeal nugatory since it relates to a non-observance of the relevant express requirements of the Criminal Procedure Code. Reference to the provisions of section 209(4) of the Singapore Criminal Procedure Code as appeared in *Mallal's* Criminal Procedure (4th Edition) which allow an advocate of the appellant, by the inclusion of the words "or his advocate" therein, to lodge a petition of appeal and the corresponding provisions of section 382 of the Indian Code of Criminal Procedure, 1973, is support for this conclusion. I would also cite the cases of *Pitting bin Haji Mohamed Ali* v. *Public Prosecutor,*[2] *Municipal Commissioner, Malacca* v. *Teh Chwee Swi*[3] and *R.* v. *McCready*[4] as further support for the conclusion at which I have arrived.

For the reasons given therefore, I hold that the purported appeal has not been properly brought before me and cannot be considered and should be rejected. I accordingly so order.

Appeal rejected.

Solicitor: *Robin Hii & Co.*